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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/719,682	02/05/2001	Anthony Ross Glen Stollery	08059.0008	3226

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Finnegan Henderson Farabow
Garrett & Dunner
1300 I Street NW
Washington, DC 20005

EXAMINER

JANVIER, JEAN D

ART UNIT	PAPER NUMBER
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3622

DATE MAILED: 04/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/719,682

Applicant(s)

STOLLERY, ANTHONY ROSS
GLEN

Examiner

Jean D Janvier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 16-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Response To Applicant's amendments

The Examiner does not approve the new title of the invention "Retail Data Manipulation". Further, the replacement drawing is not approved because it appears that it contains new matter in block 6 (**set off alarm**).

Response To Applicant's Arguments

First of all, on page 8: 19 to page 9: line: 5, Applicant traverses the taking of "Official Notice" and requests evidence, such as an affidavit, supporting that adding a percentage of said purchase amount to a jackpot total is well known in the art. However, the Examiner never takes "Official Notice" for adding a percentage of said purchase amount to a jackpot total. Rather, the Examiner takes "Official Notice", among other things, for providing an incentive (dollar amount) to a customer for performing a particular task and wherein this incentive or dollar amount is invested at an investment firm on behalf of the customer in an effort to encourage the customer to continue performing the particular task. And a reference (Kalina's) is provided accordingly. Furthermore, although the Examiner has herein provided a reference to support his assertion, however, simply requesting an affidavit or reference to support the taking of an "Official Notice" without specifically pointing out the deficiency in the "Official Notice" based on the Applicant's knowledge or based on prior art commonly available is not consider a proper request.

Second of all, and contrary to the Applicant's contention, the motivation to combine the "Office Notice" with the Small's reference is well within the level of skills of an ordinary skilled artisan who, using or implementing the system of Small, would have been encouraged at the time of the invention to incorporate the publicly disclosed information into the Small's system so as to provide an incentive to a customer by computing from the customer's transaction amount a

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certain variable percentage, due to the customer, based on the dollar amount spent (volume purchase) during a current transaction, wherein this dollar amount meets one preset threshold value among a plurality of predetermined thresholds and wherein the computed percentage (incentive) is used to pay for the chance to enter the customer's account in a lottery game or +jackpot, thereby encouraging the customer to patronize or support the local participating retailer or merchant by purchasing products or services available at the retailer's POS and using a branded credit/debit card to pay for the transaction and wherein, for each transaction conducted at the retailer or another associated retailer, the customer's account number is entered into a lottery game or game of chance, which gives the customer an opportunity to win a big jackpot or

Additionally, and contrary to the Applicant's remarks (last paragraph of the remarks), the applied rejection is a 103(a), but not a 102(b).

Therefore, the Applicant's request for allowance or withdrawal of the last Office Action has been fully considered and respectfully denied in view of the foregoing response since the Applicant's arguments as herein presented are not plausible and thus, the last Office Action, as shown below, is hereby maintained and the current **Office Action has been made Final.**

Detailed Action

Specification

The title of the invention should be brief, descriptive and technically accurate. Furthermore, the title of the invention should appear on the top portion of the first page of the specification. See 37 CFR 1.72.

This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Status of the claims

Claims 1-15 were canceled and claims 16-21 were added. Hence, claims 16-21 are currently pending in the Application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in

which the invention was made.

Claims 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Small, US Patent 4,669, 730.

As per claims 16-21, Small discloses a system for encouraging a customer or user to conduct a transaction at an ATM machine or at a participating retailer's or merchant's POS, wherein the customer uses a debit/credit card to withdraw money from the ATM machine or to pay for a purchase at the participating retailer's POS by inputting his PIN number into a terminal related to the ATM or POS and wherein the customer's account is automatically entered into a game of chance or sweepstakes (jackpot). Subsequently, the user or customer may win a prize (jackpot) based upon the outcome of the game of chance or the sweepstakes drawing (See abstract; col. 2: 11 to col. 4: 24). Furthermore, and in general, Small discloses the steps of:

Conducting at least one draw for each transaction at an ATM 2 terminal (fig.1) or P.O.S. Terminal 12 of fig.2 involving a debit card, ATM card or credit card (col. 6: 9-11);

Determining an award to a buyer or customer at P.O.S. Terminal 12 based on an outcome of the draw if the user's indicia or account matches the game drawing indicia (col.5: 39-45);

Receiving from the buyer information such as user's financial institution account number (col. 5: 39-41) for the draw; and

Affecting an outcome of the draw based on the received information (col.5, lines 41-45).

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Moreover, Small discloses, in figs. 1-3, an ATM machine (2) or a POS terminal (12) (dedicated terminal) connected to a sweepstakes processor 5 (electronic data manipulation system or jackpot processor), which is adapted or configured to perform a lottery or a sweepstakes draw at a certain time period as users or customers are using their branded cards in transactions at participating POSes.

In one embodiment, Small teaches a system wherein in areas where lottery games are permitted, the apparatus, as shown in figs. 1-3, is designed to be utilized as a lottery machine. The components are substantially similar, although a user would be required to pay consideration for the chance to enter the lottery sweepstakes. Preferably, a separate function key would be provided on the ATM or POS terminal whereby the user could designate an amount of money to be withdrawn from the user's financial institution account and applied toward the lottery. This separate sweepstakes key could also be used on the standard sweepstakes-type game to increase user awareness. **Finally, the sweepstakes computer 5 is programmed to accommodate either an instantaneous lottery determination or to enter the user's account number or other user indicia into a longer term lottery, as is well known in the art. In this case, a winner can win a big jackpot comprising wagers or bets from other users or players, as practiced in the industry (col. 4: 24-39).** It is contemplated here that the retail POS or the ATM is adapted to display the jackpot value or the prize won (intended use).

As per claim 1 and 18, Small does not expressly teach adding a percentage of the purchase amount to a jackpot total and varying by the retailers the percentages contributed.

However, It is common practice for a retailer or manufacturer to give an incentive to a customer during a transaction at a POS. For example, a participating retailer or merchant will compute from a customer's bill or balance due during a visit at the retailer's POS a certain percentage savings, due to the customer, if the customer's transaction amount falls within one or more preset thresholds (volume purchase). In other words, the percentage varied based on the value of the transaction with respect to a preset threshold.

Moreover, it is well taught in the art that a manufacturer or a retailer may provide an incentive (dollar amount) to a customer for performing a particular task and wherein this incentive or dollar amount is invested at an investment firm on behalf of the customer in an effort to encourage the customer to continue performing the particular task.

"Official Notice".

Therefore, an ordinary skilled artisan would have been motivated at the time of the invention to incorporate the above disclosure into the system of Small so as to provide an incentive to a customer by computing from the customer's transaction amount a certain variable percentage, due to the customer, based on the dollar amount spent (volume purchase) during a current transaction, wherein this dollar amount meets one preset threshold value among a plurality of predetermined thresholds and wherein the computed percentage (incentive) is used to pay for the chance to enter the customer's account in a lottery game or jackpot, thereby encouraging the customer to patronize or support the local participating retailer or merchant by purchasing products or services available at the retailer's POS and using a branded credit/debit card to pay for the transaction and wherein, for each transaction conducted at the retailer or another associated retailer, the customer's account number is entered into a lottery game or game

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of chance, which gives the customer an opportunity to win a big jackpot or prizes or free merchandises.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent 6,267,670 to Walker discloses a system and method for performing integrated lottery ticket and merchandise transactions using a point-of-sale terminal that generates a single sales receipt containing all pertinent lottery ticket and merchandise transaction information. The lottery tickets generated include fractional value and "quick-pick" lottery tickets. A group of point-of-sale terminals are connected to a POS controller, which communicates with a lottery data processing system. An encrypted authentication code also printed on the sales receipt allows the lottery player to verify all lottery ticket transaction information, as needed. In at least one embodiment, a method is provided for performing a lottery ticket transaction at a point-of-sale terminal. The method includes the steps of (1) calculating a change amount of a merchandise transaction; (2) receiving a request to purchase a lottery ticket in exchange for the change amount; (3) transmitting a request for a lottery ticket, the request including the change amount; (4) receiving lottery ticket information that is based on the change amount; and (5) printing the lottery ticket information on a receipt if the request to purchase a lottery ticket in exchange for the change amount is received, the lottery ticket information including a plurality of lottery numbers. Numerous other embodiments are also provided.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication from the Examiner should be directed to Jean D. Janvier, whose telephone number is (703) 308-6287. The aforementioned can normally be reached Monday-Thursday from 10:00AM to 6:00 PM EST. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Mr. Eric W. Stamber, can be reached at (703) 305- 8469.

For information on the status of your case, please call the help desk at (703) 308-1113. Further, the following fax numbers can be used, if need be, by the Applicant(s):

After Final- 703-872-9327

Before Final -703-872-9326

Non-Official Draft- 703-746-7240

Customer Service- 703-872-9325

JDJ

03/24/05

JEAN D. JANVIER
PRIMARY EXAMINER
Jean D. Janvier